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IN THE

Supreme Court of the United States

October Term, 1934.

No. [redacted] 29

RICHEY V. GRAHAM,

Petitioner,

v.

THE WHITE-PHILLIPS COMPANY, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT.

Richey V. Graham prays that a writ of *certiorari* issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit entered in the above cause on December 8, 1934 (R. 152) and denying the petition of Richey V. Graham for a rehearing on January 28, 1935 (R. 153), the said judgment reversing the decree of the District Court of the United States for the Southern District of Illinois, Southern Division, entered December 1, 1933 (R. 113-4).

The Findings of Fact and Conclusions of Law (R. 105-110) were signed by Honorable Charles G. Briggle, Judge, and entered of record on December 1, 1933, without written opinion.

OPINION BELOW.

The opinion of the Circuit Court of Appeals (R. 144-152) is reported in *74 Fed. (2d) 417.*

JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on December 8, 1934 (R. 152). Rehearing petition was filed on December 26, 1934 (R. 153), and denied on January 28, 1935 (R. 153). The jurisdiction of the Court is invoked under *Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (Sec. 347-a, Title 28 U. S. Code).*

QUESTIONS PRESENTED.

1. Whether, as a matter of law, The White Phillips Company, Inc., respondent, by reason of having actually received, prior to its purchase on September 22, 1930, of 8 $1000 Illinois Highway Bonds from one J. A. Connolly, a notice that the same had been stolen from Richey V. Graham, failed to become a holder thereof in due course.

2. Whether the denial by the Supreme Court of the State of Illinois of a writ of *certiorari* upon the application of *Madison and Kedzie State Bank, Petitioner, v. Northwestern National Bank, Respondent,* to review and determine the judgment entered by the Appellate Court of Illinois, of the First District, did not under the holdings of said Supreme Court of Illinois, constitute an approval of the conclusion reached by the said Appellate

Court of Illinois, First District, and whether the said action of the Supreme Court of Illinois, was not under its holdings, in effect, an affirmance of the judgment of the said Appellate Court in the cause of *Northwestern National Bank v. Madison & Kedzie State Bank*, reported in *242 Illinois Appellate Court Reports, at page 22.*

3. Does not, by reason of the denial of the said application for writ of *certiorari* by the Supreme Court of Illinois, the conclusion reached by the Appellate Court of Illinois in *Northwestern National Bank v. Madison & Kedzie State Bank, 242 Ill. 22*, govern the decision of the Courts of the United States involving the same point with reference to causes of action arising within the State of Illinois, and hence is it not decisive of this cause wherein Richey V. Graham, Petitioner, seeks the writ of *certiorari?*

4. Whether the action of The White-Phillips Co., Inc., in adopting the policy of disregarding, ignoring and treating as "junk" all notices descriptive of bonds, securities or negotiable instruments that had been stolen, coming to it from the true owners thereof, so that no reference would be made to said notices at any time to ascertain whether or not the securities which the respondent was daily purchasing were listed on these notices as stolen, did not make the respondent guilty of bad faith in purchasing the bonds stolen from Richey V. Graham, inasmuch as the respondent prior to the purchase received printed notice of said bonds having been stolen, and gave no consideration to the information contained in said circular, but on the other hand wilfully disregarded it.

5. Whether the respondent The White-Phillips Co., Inc., did not at the time of the purchase of the bonds in question have knowledge of such facts that its action in taking such securities amounted to bad faith.

THE STATUTES INVOLVED.

The Statutes involved will be found in the appendix, *infra*, pp. 20-21.

STATEMENT.

THE FACTS. The petitioner, Graham, placed the 35 $1000 Illinois Highway bonds in a safe in his home. Burglars stole them on or about September 2, 1930. He immediately gave notice of the theft to the Foreman State Corporation and to others. Pursuant to its custom the Foreman Company mailed a report of this theft to a list of municipal bond dealers on or about September 5. The Chicago branch of the respondent was on Foreman's mailing list.

Respondent is a dealer in municipal bonds with its principal office in Davenport, Iowa, and a branch office in Chicago.

Eight of the thirty-five stolen bonds were subsequently acquired by respondent from J. A. Connolly of St. Paul who, on September 13, 1930, wrote to the Chicago branch asking for bids on eight of these Illinois Highway bonds which had been stolen from Graham, giving the maturity dates. On the 16th, respondent's Chicago office wired a bid which was promptly accepted. Directions were given to ship the bonds to Davenport, but, accompanied by a sight draft, payable to a Chicago bank, they were sent by Connolly to Chicago on September 22, and payment was promptly made by the Chicago office. The bonds were then sent to the Davenport office and received by it on September 23.

The case turns upon the matter of respondent's knowledge. It appears that when the bonds arrived in the Davenport office and were lying upon the desk of a clerk, that employee went to a pencil sharpener near by, and

while he was sharpening a pencil his eye chanced to fall upon the notice of a list of stolen bonds which hung upon a nearby wall hook. Observing that Illinois Highway bonds appeared thereon he recalled that such described bonds were on his desk. Upon examining the numbers of these bonds he discovered that they had been stolen. He notified the Chicago office which in turn tried to recover the purchase price from Connolly. Connolly was sent to jail where he died. No money was recovered, but the respondent immediately used the bonds as collateral to secure a loan from a Davenport bank.

There is evidence that both the Chicago and Davenport branches had in the past received notices of stolen bonds. It was the practice in the Chicago branch to place them in a drawer. The Davenport branch placed them on a hook. There were no directions to the employees as to the handling of them, and no settled policy was pursued in bringing such notices to the attention of the office; nor were tabulations or records kept of such lists; nor were they examined before bonds were purchased. No employee was instructed to note, record or circulate the contents of the lists.

In Davenport, the office boys in charge of the mail put the lists on the hook "because they didn't know of anywhere else to put them," and they also put other papers on the same hook.

(The foregoing is largely an abbreviation of the statement of facts by the Court of Appeals.)

Master in Chancery Edward P. Allen found that copies of the notice entitled "Stolen Bonds" were mailed by the Foreman State Corporation to the White-Phillips Co., Inc., at its Chicago office and also the main office at

Davenport (R. 87), and that the said The White-Phillips Co., Inc., received both of said notices entitled "Stolen Bonds", but that no examination was made of said notices, and no consideration of the information as contained in said circular was given to it whatsoever, but on the other hand, totally and utterly disregarded (R. 88). He further found

> "that the policy of said The White-Phillips Co., Inc., in the handling of said notices received, either at the Chicago or Davenport offices of said Company, was of such a character that said notices were totally disregarded, and none of the clerks or office force of said Company were instructed to examine or refer to said notices of stolen securities; that the Executives of said Company considered all of said notices of like character as 'junk,' and that no system was followed in the handling of these notices, except in the Chicago office they were placed in a drawer with miscellaneous matters, and in the Davenport office were filed upon a clip, but no reference was made to them at any time to ascertain whether or not the securities which they were daily purchasing were listed on these notices as stolen (R. 88). The District Court found that no effort was at any time made by said respondent, either by consultation of the records in its office, or otherwise, to investigate or ascertain the title of said J. A. Connolly in and to said bonds, or his right to dispose of the same, or to discover whether or not said bonds had been stolen. (7th Fact finding p. 107); and (8th Fact finding) that the purpose of the hook or clip in the outer office at Davenport 'among other things was to hold and display notices of stolen securities of the character here involved; but that in said office no one of the employes, officers or agents of said respondent was charged with the duty of making any check upon the contents of such notices so received by said respondent, and no system for conveying or recording or preserving such information as might be contained in such notices and similar notices received at respondent's Chicago offices to the members of the office

force of said respondent had ever been put into effect. That said hook or clip was used by the office boy who opened the mail, for the purpose of holding a variety of circulars, notices as to stolen securities, which were not distributed by the office boy to individuals in the office for attention, and there was no policy or custom in said office requiring any one in the office to pay any attention to the said hook or clip or anything it held.'" (R. 107-8.) The Court's Tenth Fact finding is:

That the respondent, The White-Phillips Company, Inc., as a corporate entity, at and before it purchased the aforesaid bonds had, by virtue of the notice so received at its Davenport office, received actual notice that the same had been stolen from the said Richey V. Graham, the true owner thereof; that at the time of such purchase the said mimeograph notice was on the hook or clip hereinbefore referred to; that said notice was in such position that nothing more than a casual glance by a person standing in the vicinity thereof was required to convey information that the bonds here involved had been stolen; and that the failure and neglect of said respondent to observe and learn the contents of such notice prior to the purchase of the securities here involved must be considered as amounting to a wilful and conscious disregard of the rights of the true owners of said securities, the said Richey V. Graham (R. 108-9). The District Court's fifth and final conclusion of law is:

That the respondent, The White-Phillips Company, Inc., by reason of having actually received, prior to its purchase of the securities here involved, a notice that the same had been stolen as hereinabove set forth, did not, by the purchase of said bonds, become a holder thereof in due course, but that at such time the said respondent had knowledge of such facts that its action in taking such securities amounted to bad faith (R. 109-10).

In the decree the District Court adjudged:

> "That the exceptions filed by the respondent The White-Phillips Company, Inc., to the Report of Edward P. Allen, Master in Chancery, to whom this cause was hitherto referred, be and the same are hereby overruled" (R. 113).

The Court of Appeals in concluding its opinion held:

> "In determining this question, we assume that the notices which were sent out by the Foreman Company were received both at Davenport and Chicago; that there was a want of ordinary care upon the part of the Chicago branch in not making more elaborate provision for the dissemination of the knowledge which said notices gave; that in purchasing the bonds appellant paid full value therefor; and at the time it had no actual knowledge they were stolen; that it made no investigation to ascertain whether the said bonds were stolen other than to inquire as to the status of the party who offered them for sale; that the information which came from the receipt of such notice of the theft of eight Illinois Highway bonds had been forgotten" (R. 151).

SPECIFICATIONS OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred:

1. In holding that "the fact that the defeated party sought to review the decision" and the Supreme Court of Illinois denied its application for a *certiorari* makes the decision in the case of *Northwestern National Bank v. Madison & Kedzie State Bank,* in the Appellate Court of Illinois, no more authoritative.

2. In holding that the rule announced in *Northwestern National Bank v. Madison and Kedzie State Bank, 242 Ill. App. 22,* had not been approved and passed on by the Supreme Court of Illinois by virtue of its having passed on and denied application for a writ of *ceritorari* to review said action of said Appellate Court in said cause.

3. In holding that the action of the highest Court of Illinois in approving the conclusion reached by the Appellate Court of Illinois in the case of *Northwestern National Bank v. Madison & Kedzie State Bank, 242 Ill. App. 22,* and the affirmance of said judgment by the Supreme Court of Illinois by reason of its denial of the application for a writ of *certiorari,* as aforesaid, did not govern the Courts of the United States with reference to the same point in the cause of action arising in the State of Illinois in favor of Richard V. Graham and against the White-Phillips Company, Inc., and brought to the District Court of the United States for the Southern District of Illinois, Southern Division, by removal from the Circuit Court of Sangamon County, Illinois.

4. In holding that the printed notice received by The White-Phillips Company, Inc., prior to its purchase of the eight Illinois Highway bonds for $1000 each, that the said bonds had been stolen from and were the property of Richard V. Graham, did not render the said purchase invalid and the said Company liable for the return to said Graham of said bonds as the owner.

5. In holding that the respondent when it purchased said bonds did not have actual knowledge of the infirmity or defect in the title to said bonds and that the same were the property of Richey V. Graham.

6. In holding that the respondent, The White-Phillips Company, Inc., did not, when it acquired the eight Illinois Highway bonds from J. A. Connolly, have knowledge of such facts that its acts in taking the said bonds amounted to bad faith.

7. In reversing the decree and judgment of the District Court.

REASONS FOR GRANTING THE WRIT.

The decision below appears to be erroneous. We submit that when the Supreme Court of Illinois denied the application for a writ of *certiorari* in the case of *Northwestern National Bank v. Madison and Kedzie State Bank, 242 Ill. App. 22,* it thereby approved the conclusion reached by the Appellate Court and the denial of the said writ was in effect an affirmance of the judgment of the Appellate Court. The Supreme Court of Illinois so ruled in the case of *Soden v. Claney, 269 Ill. 98-102,* and a close reading of *People v. Grant, 283 Ill. 391, 397,* shows that the Court still adheres to its ruling in *Soden v. Claney, supra,* as it points out that the case under consideration was a different case than one counsel had referred to that had been before the Appellate Court where the Court had denied a writ of *certiorari.*

The Court says in the *Grant case* that the denial of the writ of *certiorari* in the mandamus case therein referred to meant nothing more than "that we approve the conclusion of the Appellate Court that the State's Attorney should have signed and presented the petition".

This Court adopted the ruling of the Illinois State Supreme Court that the denial of a writ of *certiorari* is an approval of the conclusion reached by the Appellate Court and in effect is an affirmance of the Appellate Court judgment, in the case of *Minneapolis, St. Paul and Sault Ste. Marie Ry. Co., Petitioner, v. John Rock, 279 U. S. 410 (412),* and cited *Soden v. Claney, supra,* and *People ex rel. Hoyne v. Grant, supra,* as establishing that rule of the Illinois Supreme Court. In the same case this Court holds that:

> "Whenever the highest court of a state by any form of decision affirms or denies the validity of a judgment of an inferior court, over which it can by law

exercise appellate authority, the jurisdiction of this court to review such decision, if it involves a Federal question, will, upon a proper decision attach." *279 U. S. 412.*

The conclusion reached by the Illinois Appellate Court in *Northwestern Natoinal Bank v. Madison & Kedzie State Bank, supra,* was that:

> "As a matter of law receipt by a bank on the 5th day of January, 1925, of a circular list of securities alleged to have been stolen from a bank in a sister state constitutes 'actual knowledge' within the meaning of *Section 56 of the Uniform Negotiable Instruments Act,* at a subsequent date, viz., May 9, 1925, of an infirmity or defect in the title of the person then negotiating some of such securities."

The foregoing interpretation of the ruling of the Appellate Court was submitted to the State Supreme Court by the Madison and Kedzie State Bank, the petitioner for the writ, with the statement that "the judgment of the Appellate Court was based solely upon its (that) ruling," and that:

> "The precise point is exceedingly important to the banking and commercial industries of Illinois, in fact to the public at large. It has never been ruled on by this (Ill. State Supreme) Court, or as far as we can determine by any other court in construing the Uniform Negotiable Instruments Act."

See copy of petition for writ of *certiorari* (R. 142, with certificate of Adam F. Bloch, Clerk of said Illinois Court).

And the Appellate Court of Illinois likewise defines the question involved and the conclusion reached in its decision when it sets forth in its opinion:

> "The real question, as we conceive it, is whether on the undisputed fact defendant received said notice in the manner aforesaid, it is chargeable with the actual knowledge of the theft when it received the

> bonds" (R. 138). • • • "The notice having been received by the proper agent of the bank to receive, open and acknowledge its mail in the line of his duties, we think the bank is estopped from claiming that it did not have actual knowledge of the effect of the bonds it subsequently received. • • • In this view of the case we think upon the undisputed evidence defendant had actual knowledge that the bonds were stolen, and as a matter of law, therefore, was not a holder in due course under the Uniform Negotiable Instruments Law. Accordingly as a matter of law the judgment will be reversed" (R. 139-140).

If we are correct in this, it shows that the holding in *Northwestern National Bank v. Madison & Kedzie State Bank, supra*, was binding on the District and Circuit Court of Appeals Courts in the instant cause and that the District Court followed the law as to notice as declared by the State Courts of Illinois, while the Circuit Court of Appeals in not following the rulings of the State Courts committed error in their reversal of the decree of the District Court.

The *facts being* established that the respondent received printed notices by mail in both its offices, notifying it that $35,000 of Illinois Highway bonds had been stolen from the residence of petitioner, and that no examination was made of said notices, and no consideration whatsoever was given of the information contained in said circular, but on the other hand, the same was totally and utterly disregarded (R. 88); and that the policy of the White-Phillips Co., Inc., was to disregard all notices of stolen securities and to consider them as "junk" and to make no reference to them at any time to ascertain whether or not the securities which they were daily purchasing were listed on these notices as stolen (R. 87-88), and that within less than eleven days after the said notices had been re-

ceived by the respondent it offered to, and six days later did, purchase eight of the stolen bonds from J: A. Connolly, a non-resident stranger; and that no effort was at any time made by said respondent (W-P Co.), either by consulting the records of its office, or otherwise, to investigate or ascertain the title of Connolly in and to said bonds, or his right to dispose of the same, or to discover whether or not said bonds had been stolen (R. 107), established as a matter of law that the respondent under the provisions of *Sections 52 and 56 of the Illinois Negotiable Instruments Law* was not a holder in due course of the eight bonds so acquired, for the reason that it did not take said bonds in good faith; and that at the time of the negotiation it had received notice of:

> "Infirmity in the instrument or (and) defect in the title of the person negotiating it, and the respondent had actual knowledge of the infirmity or defect, (in that it had received the circular notification of the bonds having been stolen), and knowledge of such facts (to-wit: its policy of disregarding such and all other like warnings) that its action in taking the instrument amounted to bad faith."

And the Master in Chancery in his report, and the District Court in its Findings of Fact and Conclusions of Law both so found.

The wording of *Section 56 of the Illinois Statute* defining "What is notice of defect" is in the past tense, *i. e.*, "the person to whom it is negotiated must *have had* actual knowledge of the infirmity or defect," and we submit that the language and effect of the statute annot be evaded by showing that the party receiving the instrument *had had* knowledge of the defect in the instrument he subsequently purchased, but that as a matter of business policy he cast aside and ignored the notice.

ILLINOIS DECISIONS DEFINING NOTICE.

Drouineau v. Bank, 244 Ill. App. 251.
Seaverns v. Presbyterian Hospital, 173 Ill. 414, 420.
Simmons v. Roseland Security Vault Co., 331 Ill. 563-574.
First National Bank, Taylorville, v. Kalb, 256 Ill. App. 159.
Peru State Bank v. Waggett, 230 Ill. App. 522.
Tollifsen v. Middle States Inv. Co., 253 Ill. App. 320.
Housh v. Tolson, 254 Ill. App. 126-132-134.
Metcalf v. Draper, 98 Ill. App. 399-404.

So that it seems a certainty

(1) That the Illinois Legislature made the serving of notice of the infirmity or defect of title to a negotiable instrument complete protection to the true owner of the instrument, against a subsequent purchaser of stolen securities who had therefore received a copy of the notice.

(2) The Supreme Court of Illinois has repeatedly defined what method of service of notice is sufficient to bind a corporation; and

(3) When the Appellate Court in the case of *Northwestern National Bank v. Madison & Kedzie State Bank, supra,* followed the wording of the Statute and the holdings of the Supreme Court as to the binding effect of notice properly served, the Illinois Supreme Court adopted the conclusion of the Appellate Court and chose to in effect affirm the judgment rather than unnecessarily increase its labors by enlarging its hearing docket.

(4) The bad faith doctrine, grudgingly recognized decades ago, is properly given broader interpretation in these days, obviously as a matter of public policy which demands cooperation from the business interests, in hampering high powered gangsters in the disposal of the proceeds of their spectacular burglaries and robberies.

The Federal Courts have sustained this "bad faith" doctrine which existed under the common law, and is a part of the uniform *Negotiable Instruments Act*, and the State Courts have also.

We cite the holdings in *Goodman v. Simmonds, 20 How. 343, 367,*.

> "gross negligence may be evidence of *mala fides*"; *Murray v. Lardner, 69 U. S. 110, 121,* "The rule may perhaps be said to resolve itself into a question of honesty or dishonesty, for guilty knowledge and wilful ignorance alike involve bad faith. They are the same in effect; *Vermilye v. Adams Express Co., 21 Wall. 138, 146,* 'Bankers and brokers cannot, more than others, when warned of possible or probable danger in their business, shut their eyes and plead a want of knowledge which is wilful;' *Hotchkiss v. National Shoe & Leather Bank, 21 Wall. 354, 359.* "Bad faith which implies guilty knowledge or wilful ignorance"

or the part of the purchaser must appear.

The case of *Morris v. Muir, 111 Misc. (N. Y.) 739,* where the practice of the brokers in so conducting their office that people could apply there and without question being raised dispose of their securities whether stolen or otherwise, correctly states the bad faith rule. This case was affirmed in the Appellate Division on the opinion below. Therein many cases are cited to sustain its finding of bad faith in the case reviewed. Thus:

"The manner in which the defendants conducted their Liberty loan department provided an easy way for thieves to dispose of their plunder. It is a case of 'no question asked'. I do not for one moment wish to charge the defendants with the intention of extending an invitation to bond thefts. They are men of good reputation. I believe it is only necessary to call their attention to the lack of precautionary measures and that the proper remedy will be applied.

"Upon the facts in this case I do not hesitate in arriving at the conclusion that the action of the defendants in buying the bonds amounted to bad faith within the authorities. The defendants were grossly negligent in purchasing the bonds. Although gross negligence does not of itself constitute bad faith as a matter of law, it is evidence from which bad faith may be inferred. *Bipp v. Smith, 137 Wis. 234.*"

"The term 'bad faith' as used in the Statute does not necessarily involve furtive motives *(Ward v. City Trust Co., 192 N. Y. 61, 73)*; it means bad faith in a commercial sense. *Rochester & Charlotte Turnpike Road Company v. Paviour, 164 N. Y. 281, 286.*"

In the latter case, at page 284, the Court says:

"While he was not bound to be on the watch for facts which would put a very cautious man on his guard, he was bound to act in good faith. *(Second National Bank v. Weston, 161 N. Y. 520, 526; Cheever v. Pittsburgh, etc. R. R. Co., 150 N. Y. 59, 66.)* Even if his actual good faith is not questioned, if the facts known to him should have led him to inquire, and by inquiry he would have discovered the real situation, in a commercial sense he acted in bad faith and the law will withhold from him the protection that it would otherwise extend."

Wilful disregard of known facts showing want of title *or wilful evasion of knowledge of the facts amounts to bad faith. Matter of Hopper-Morgan Co., 156 Fed. Repr. 525.*

In *Hallock v. Young, 72 N. H. 416, 419, 420, 57 Atl. 236, 238.*

The Court said:

> "It was said in the leading case on the subject in this country, that 'while he is not obliged to make inquiries, he must not wilfully shut his eyes to the means of knowledge which he knows are at hand • • • for the reason that such conduct, whether equivalent to notice or not, would be plenary evidence of bad faith.'"

The Supreme Court of Illinois has directly construed the Negotiable Instruments Act and the bad faith rule.

In *Renfrow v. Kramer, 341 Ill. 398, at 406,* it is held:

> "*Sections 52 and 56 of the Negotiable Instruments Act* define a holder in due course. Among other conditions the statute requires that at the time the holder took the paper he had no *notice* of any infirmity in the instrument or defect in the title of the person negotiating it. By *Section 56* of that act it is provided that where one has actual knowledge of any infirmity in the instrument or defect in the title of the one transferring it, or knowledge of such facts as to render his act in taking the instrument one of bad faith, such person is not a holder in due course. Under the law, though there is direct and positive testimony that the plaintiff is a holder in due course, yet if circumstances are shown in evidence which by their fair and reasonable inferences tend to show bad faith as defined in the Negotiable Instruments Act, the question whether the plaintiff is a holder in due course becomes one of fact for determination by the jury. *(Foncannon v. Lewis, 327 Ill. 455.)* In this case there is not only evidence of want of consideration and fraud practiced against the Kramers, but there is also evidence of knowledge on the part of Renfrow at least of such want of consideration."

To the same effect, see, *Bell v. McDonald, 308 Ill. 329, 335.*

We submit that this construction binds the Courts of the United States in passing upon the issues involved in this *Graham v. White-Phillips Co., Inc.*, case.

Moreover, we believe that the Circuit Court of Appeals overlooked its ruling in *C. F. Childs & Co. v. Harris Trust & Savings Bank, 27 Fed. (2nd) 633*, decided in the year 1925, where the holding was first, that the rights of a party taking negotiable instruments in Illinois would be determined according to the laws of this State, and second, that the receipt of the *notice* of the character here involved would prevent the recipient thereof from thereafter becoming a holder in due course.

We further submit that the Court failed to distinguish the case of *Merchants National Bank v. Detroit Trust Company, 258 Mich. 526*, from the instant "bad faith" case, in that in the Michigan case it was clearly proven that the treatment of the bank of notices received in the mail to the effect that securities had been stolen showed an honest purpose on the part of the bank of avoiding if possible the purchase of securities in all cases where notices had been given through the mail of theft having occurred.

The Circuit Court of Appeals also erred in holding that the information which came from the receipt of notice of the theft *had been forgotten*. As no employe but the office boy who hung the notice on the hook had knowledge of its contents, and certainly the person conducting the purchase had no such knowledge, there was nothing to forget. If the notice in itself was not sufficient to disqualify the ownership of the respondent, then we submit that the

knowledge by the respondent that such notices that came to its offices advising it of bonds and securities with certain serial numbers having been stolen from the rightful owner, and warning the respondent not to purchase the same, were never called to the attention of the employes of the respondent and never given any consideration, and never served as a deterent to the purchase of such securities, constituted knowledge of such facts that respondent's action in acquiring instruments which it had been definitely advised were stolen instruments, amounted to bad faith towards the public and towards the true owners of such securities.

Incidentally, the opinion of the Circuit Court of Appeals in the instant case is markedly suggestive of the desirability of a review by the Supreme Court, and further, the Circuit Court of Appeals in this case "decided an important question of local law in a way probably in conflict with local decisions" and the character of reasons that we have urged for the granting of the prayer of the petition manifestly come within those referred to in numbered *paragraph 5, sub-paragraph (b) of rule 38.*

Wherefore, it is respectfully submitted that this petition should be granted.

Respectfully submitted,

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Attorneys for Richey V. Graham, Petitioner.

April, 1935.

APPENDIX.

The Statutes Involved.

United States Code Annotated, Title 28.

Section 347. (Judicial Code, Section 240, amended.) Certiorari to Circuit Courts of Appeals and Court of Appeals of District of Columbia; appeal or writ of error to Supreme Court from Circuit Courts of Appeals in certain cases; other reviews not allowed. (a) In any case, civil or criminal, in a Circuit Court of Appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal.

Smith-Hurd Illinois Statutes, Chapter 98, Negotiable Instruments, Article IV.

72. Who is a holder in due course.] §52. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That the instrument is complete and regular upon its face.
2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.
3. That he took it in good faith and for value.
4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

75. When title is defective.] §55. The title of a person who negotiates an instrument is defective within the

meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

76. Notice of defect—What is.] §56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of such facts that his action in taking the instrument amounted to bad faith.

78. When instrument subject to original defenses.] §58. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But the holder who derives his title through a holder in due course, and who is not himself a party to any fraud or duress or illegality affecting the instrument, has all the rights of such former holder in respect to all parties prior to such holder.

79. Who is deemed holder in due course.] §59. Every holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.